

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	Case No. 4:16CV3023
Plaintiff,)	
)	
vs.)	TENTATIVE
)	FINDINGS
ADAM CERVENKA,)	
)	
Defendant.)	

I am in receipt of the presentence investigation report in this case. There are no objections, but a variance motion has been filed by the defendant.

IT IS ORDERED that:

(1) The undersigned will consult and follow or deviate from the Guidelines to the extent permitted and required by *United States v. Booker*, 543 U.S. 220(2005) and subsequent cases. In this regard, the undersigned gives notice that, unless otherwise ordered, he will (a) give the advisory Guidelines such weight as they deserve within the context of each individual case and will filter the Guidelines general advice through §3553(a)'s list of factors; (b) resolve all factual disputes relevant to sentencing by the greater weight of the evidence and without the aid of a jury; (c) impose upon the government the burden of proof on all Guideline-enhancements; (d) impose upon the defendant the burden of proof on all Guideline-mitigators; (e) depart from the advisory Guidelines, if appropriate, using pre-Booker departure theory; and (f) in cases where a departure using pre-Booker departure theory is not warranted, deviate or vary from the Guidelines when there is a principled reason for doing so. I no longer give the Guidelines “substantial weight.”

(2) The pending motion for variance (filing no. [53](#)) will be resolved at sentencing and the motion to restrict (filing no. [54](#)) is granted.

(3) Except to the extent (if at all) that I have sustained an objection or granted a motion or reserved an issue for later resolution in the preceding paragraph, the parties are herewith notified that my tentative findings are that the presentence report is correct in all respects.

(4) Any objection to these Tentative Findings may be asserted orally at sentencing.

November 8, 2016.

BY THE COURT:

Richard G. Kopf

Senior United States District Judge